

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

EVAN COOTE

PLAINTIFF

VS.

OFFICERS CLAY NECAISE, TRAVIS FOREMAN, and PATRICK BARBER, individually and in their official capacity as a duly commissioned Police Officers for the City of Waveland, MS; POLICE CHIEF James A. Varnell, individually and in his official capacity as a duly commissioned Police Officer for the City of Waveland, MS; David Garcia, individually and in his official capacity as Mayor of The City of Waveland, MS; THE CITY OF WAVELAND; UNKNOWN JOHN AND JANE DOES A-Z

CIVIL ACTION NO.
1:11-cv-00053-LG-RHW

DEFENDANTS

PLAINTIFF'S DESIGNATION OF EXPERT WITNESSES

COMES NOW Plaintiff herein and files this, his designation of expert witnesses, pursuant to the provisions of Rule 26 of the Federal Rules of Civil Procedure and Rules 5.3 and 26.1 of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi, as follows, to-wit:

1. DEAN McWILLIAMS, a licensed and practicing attorney; Lieutenant and Director of Training for the Topeka Kansas Police Department, and Adjunct Professor of Criminal Justice at Washburn University, is expected to provide opinions in testimony as to the scope, manner, justification and place of intrusion of taser usage on the Plaintiff along with Police Officer duties, training and other relevant facts and data related to the incident including interaction between the Plaintiff and Defendants. Mr. McWilliam's testimony is expected to be consistent with the findings and opinions expressed in his report attached as Exhibit "A" hereto and incorporated herein by reference for all purposes.

A copy of Mr. McWilliam's current curriculum vitae is attached as Exhibit "B" hereto and incorporated herein by reference for all purposes.

A list of all other litigation in which Mr. McWilliams has provided expert testimony within the four (4) years next preceding the filing of this designation are none.

Mr. McWilliams is retained by the Plaintiffs at the rate of \$200.00 per hour for his professional services.

RESPECTFULLY SUBMITTED this, the 19th day of September, 2011.

BY: /s/ Bobby Moak
BOBBY MOAK,
Attorney for Plaintiff

Law Office of Bobby Moak, PC
P.O. Box 242
Bogue Chitto, MS 39629-0242
(601) 734-2566
MS Bar # 9915

CERTIFICATE OF SERVICE

I, Bobby Moak, hereby certify that I have this day forwarded via United States Mail, postage prepaid, a copy of the foregoing Plaintiff's Designation of Expert Witnesses to the following:

Gary E. Friedman
William Brett Harvey
PHELPS DUNBAR
P.O. Box 23066
111 East Capitol Street, Suite 600
Jackson, MS 39225-3066

Zach Butterworth
Gary Yarborough, Jr.
HESSE & BUTTERWORTH, PLLC
841 Highway 90
Bay St. Louis, MS 39520

Dated, this the 19th day of September, 2011.

/s/ *Bobby Moak*
Bobby Moak

MCWILLIAMS LAW OFFICE
Dean J. McWilliams, Attorney at Law
3024 SW Wanamaker Rd., Suite 307
Topeka, Kansas 66614-4498
Office (785) 232 8033 Fax (785) 246 5301
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Bobby Moak
Attorney at Law
P.O. Box 242
Bogue Chitto, MS 39629

Re: 11-CV 00053-LG

Findings

After a review of the case in its totality, I believe the below listed violations of Evan Coote's civil rights occurred:

Discussion

Evan Coot was stopped by Officer Clay Necaise of the Waveland Police for a traffic violation.

- 1 Officer Clay Necaise tasered or drive stunned Evan Coote two to three times.
- 2 Coote was tasered again by officers Barber and Foreman as a punitive means.

CONCLUSION

With the information gathered to date, I have reached the following conclusions:

1 Officer Necaise use of the Taser on Mr. Coote was unreasonable and does not follow the principals established in *Graham v. Connor*, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989). “[A]ll claims that law enforcement officers have used excessive force—deadly or not--in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.” 490 U.S. at 395. Factors:

- (1) Scope of the intrusion (degree and extent of force used).
- (2) Manner of intrusion (type of force used).
- (3) Place where intrusion occurred (where force was used).
- (4) Need to perform official duties (task officer was performing when force was used).
- (5) Justification for intrusion (why force was used, weighed against governmental interest at stake).
- (6) Severity of the crime involved.
- (7) Whether suspect was immediate threat to officers or others.
- (8) Whether suspect actively resisted.
- (9) Whether suspect tried to evade arrest by fleeing.
- (10) Other facts and circumstances relevant to the situation and the force decision (totality of the circumstances).

4TH FOURTH AMENDMENT

All uses of force are considered "seizures" and are analyzed by courts under the Fourth Amendment to the United States Constitution. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Although the Fourth Amendment technically limits the power of the federal government, it is applied against state actors through the due process clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)

An individual is 'seized' when an officer restrains his freedom, even if the detention is brief and falls short of arrest. The Fourth and Fourteenth Amendments prohibit unreasonable seizures as well as searches. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45

1 (a) Officer Necaise, Barber and Foreman use of the Taser and physical force on Mr. Coote violated his Fourth Amendment rights.

2 Officer Necaise, Barber and Foreman use of the Taser is outside the principles, model policies and training of IACP and PERF.

3 Officer Necaise, Barber and Foreman use of the Taser does not follow the principals of current trainings in the field.

4 Officer Necaise, Barber and Foreman use of the Taser does not follow the principals and recommendations of the manufacture.

5 Officer Necaise , Barber and Foreman use of hands on control does not follow the principals of current trainings and is not reasonable and is a violation of Graham v. Connor, 490 U.S. 386, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989).

Respectfully Submitted,

Dean J. McWilliams

Dean J. McWilliams
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Topeka, Kansas 66618
Home (785) 267-0998 Law Office (785) 232-8033
Cell (785) 845 5592

Curriculum Vitae

TOPEKA POLICE DEPARTMENT

Rank History

Lieutenant, 2010 – Present

Director of Training / Accreditation Manager

Responsibilities include the overall operations of the Training Section and serve as Accreditation Manager. This includes planning, organizing, directing, staffing, controlling, training and budgeting for within the Training Section. Lead, supervise, and evaluate two Sergeants who are responsible for the supervision of subordinate employees. Review and/or initiate disciplinary action for subordinate employees. Set goals, objectives, and performance standards for all units in Training. Provide leadership and guidance in achieving those goals and objectives. Ensure department policies and rules are followed. Work closely with criminal justice professionals throughout the state and region.

Criminal Investigations

Persons / Major Case Squad 2008 - 2010

Responsible for the overall operations of the Persons section who investigate homicides, rapes, sex crimes, aggravated assaults, aggravated batteries, crimes against children and domestic violence crimes. Lead, supervise, and evaluate five Sergeants who are responsible for the supervision of subordinate employees. Review and/or initiate disciplinary action for subordinate employees.

Field Operations Shift Commander / Helicopter Unit 2003 – 2008

Responsible for ensuring that there are adequate personnel to perform the required police functions, that the function is accomplished according to applicable statutes, established rules and regulations, and current directives and procedures. Directed and coordinated all operations of the shift. Lead, supervise, and evaluated six Sergeants who are responsible for the supervision of subordinate employees. Review and/or initiate disciplinary action for subordinate employees.

Field Operations

Sergeant, 2000 – 2003

Served as first line supervisor for uniformed patrol officers in an assigned geographical area of the city during a given shift. Lead, supervised, and evaluated six officers, corporal and canine officer.

Criminal Investigations

Detectives, 2000

Conducted investigative through intelligence-led policing practices. Provided an immediate response to all major incidents during assigned shifts. Completed complex criminal investigations.

Field Operations

Corporal, 1997 – 2000

Served as a first line supervisor for the uniform patrol division officers in an assigned geographical area of the city during any given shift. Assisted a sergeant and lead, supervised, and evaluated six officers, and canine officer.

Administration / Accreditation

Corporal, 1998

Served as interim Accreditation Manager and assisted the department in becoming CALEA accredited by writing polices and building accreditation files.

Helicopter Unit

Officer / Pilot, 1992 – 1997

Served as pilot-in-command and co-pilot in various helicopters including a Schweizer 300, OH-58 and Robinson – 44. All of the helicopters included FLIR units and other specialized police equipment.

Field Operations

Officer, 1987- 1992

Conduced day to day uniformed patrol activities throughout the city on various shifts.

Department Boards and Committees

Defensive Action Review Board

Policy Review Committee

Training Advisory Board

Kansas CALEA Coalition

Academy Instructor Assignments

Racial Profiling
Report Writing
Courtroom Testimony
Civil and Criminal Liability
Criminal Investigations
Kansas Law

Selected Trainings

Performance Improvement Plans – April 2010 Topeka, Kansas
Police Liability – April 2010 Overland Park, Kansas
Managing Police Discipline – April 2009 Overland Park, Kansas
Public Information Training – February 2009 Topeka, Kansas
Managing Major Case Investigations - October 2008 Kansas City, Missouri
Racial Profiling Train-the Trainer – April 2008 Olathe, Kansas
Incident Command System Train-the-Trainer February 2008 Lenexa, Kansas
The Commission on Accreditation for Law Enforcement Agencies Spring Conference -
March 2007 Greensboro, North Carolina
Crime Analysis – November 2007 Overland Park, Kansas
FEMA ICS 400 Train-the-Trainer - January 207 Shawnee, Kansas
Taser X-26 Advanced and Taser M-26 Certified Instructor Course- March 2006 Topeka,
Kansas
International Flight Safety Training -May 2006 Ft. Worth, Texas
State and Local Anti-Terrorism Train the Trainer, Bureau of Justice Assistance - April
2005 Wichita, Kansas
Core Mediation Training and Civil Mediation Training, City of Topeka - April 2005
Topeka, Kansas
Police Legal Advisor Training Program, Federal Law Enforcement Center - March 2005
Glynco, Georgia
The Commission on Accreditation for Law Enforcement Agencies Spring Conference -
March 2003 Tulsa, Oklahoma

Major Staff Projects

Election Day Emergency Contingency Plan 2006
Presidential Visit Detail
Presidential Candidate Detail
Annexation Project 2004
Shelter in Place Emergency Plan
Helicopter Crash Investigation
Helicopter Unit Review & Evaluation

WASHBURN UNIVERSITY

Adjunct Professor
2001 to Present

Serve as Adjunct Instructor for the Department of Criminal Justice. Instruct both traditional and online classes on various criminal justice topics including Community Policing, Introduction to Law Enforcement, Judicial Process, Corporate Security and legal issues.

Outstanding Adjunct Professor 2006

MCWILLIAMS LAW OFFICE, LLC

Owner / Attorney 2002 – present

Operate a general law practice in Shawnee County, Topeka, Kansas. Focus in the areas of law enforcement officer's rights and defense. Additional practice in the areas of bankruptcy, business law, probate and family law.

JACKSON COUNTY, KANSAS ATTORNEY'S OFFICE

Assistant County Attorney

April 2004 to January 2005 / May 2007 – Jan 2008

Served as First Assistant County Attorney. Assignments included determining what cases to file and at what appropriate charging level. Prosecuted felonies and misdemeanors through both bench and jury trials. Served as legal advisor to several law enforcement agencies in the county.

Selected Trainings

Trial Advocacy I – National District Attorney's Association October 2004 – Columbia, South Carolina

EDUCATION

Juris Doctor – Washburn University School of Law - May 2002

Summer Law Study, Kings' College, London, England - 2000

Master of Science, Criminal Justice – University of Alabama - May, 1997

Bachelor of Science, Criminal Justice – Washburn University -May 1994, Departmental Honors

Dean J. McWilliams

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Topeka, Kansas 66618
Home (785) 267-0998 Law Office (785) 232-8033
Cell (785) 845 5592

EMPLOYMENT HISTORY

Topeka, Kansas Police Department
July 13, 1987 to Present

- Currently assigned as Director of Training and Accreditation Manager
- Served as Lieutenant and Shift Commander in the Uniform Services Division, Lieutenant in charges of Persons Crimes in the Criminal Investigations Division and Commander of the Helicopter Unit
- Served as Field Training Officer, Helicopter Pilot, Corporal, Interim Accreditation Manager, Detective, Sergeant, Assistant Emergency Management Officer and Police Academy Instructor
- Responsible for the operating budget of the Helicopter Unit
- Wrote many of the department's General Orders and Standard Operating Procedures, drafted the department's Election Day Emergency Contingency Plan, Oakland Water Treatment Security Plan, Shelter in Place Procedure and other emergency procedures
- Served on the Use of Force Board, Police Pursuit Board and many promotional boards
- Conducted numerous complex felony investigations as detective
- Worked as a liaison with federal agencies and other departments during political and other major events

2005 Jackson County, Kansas County Attorney's Office
April 2004 to January 2005 / May 2007 – Jan 2008

- Served as First Assistant County Attorney
- Determined what cases to file and the appropriate charging level
- Prosecuted felonies and misdemeanors through both bench and jury trials
- Served as legal advisor to several law enforcement agencies

Washburn University of Topeka

August 2001 to present

- Serve as Adjunct Instructor for the Department of Criminal Justice. Instruct both traditional and online classes on various criminal justice topics including Community Policing, Introduction to Law Enforcement, Judicial Process and Corporate Security
- Frequent lecturer at Kansas' CLE and Law Enforcement training seminars

EDUCATION

Bachelor of Science, Criminal Justice – Washburn University
May 1994 – Departmental Honors

Master of Science, Criminal Justice – University of Alabama
May, 1997

Summer Law Study, Kings' College, London, England - 2000

Juris Doctor – Washburn University School of Law
May 2002

SELECTED RECENT PROFESSIONAL TRAINING

Performance Improvement Plans – April 2010 Topeka, Kansas

Police Liability – April 2010 Overland Park, Kansas

Managing Police Discipline – April 2009 Overland Park, Kansas

Public Information Training – February 2009 Topeka, Kansas

Managing Major Case Investigations - October 2008 Kansas City, Missouri

Racial Profiling Train-the Trainer – April 2008 Olathe, Kansas

Incident Command System Train-the-Trainer- February 2008 Lenexa, Kansas

The Commission on Accreditation for Law Enforcement Agencies Spring Conference

March 2007– Greensboro, North Carolina

FEMA ICS 400 Train-the-Trainer -January 207 Shawnee, Kansas

Taser X-26 Advanced and Taser M-26 Certified Instructor Course- March 2006 Topeka, Kansas

International Flight Safety Training - May 2006 Ft. Worth, Texas

State and Local Anti-Terrorism Train the Trainer, Bureau of Justice Assistance

April 2005 – Wichita, Kansas

Core Mediation Training and Civil Mediation Training - April 2005 Topeka, Kansas

Police Legal Advisor Training Program - March 2005 Federal Law Enforcement Center
Glynco, Georgia

Trial Advocacy I – National District Attorney's Association - October 2004 Columbia, South Carolina